FILED
U.S. Bankruptcy Appellate Panel of the Tenth Circuit

March 10, 2003

Barbara A. Schermerhorn Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE TEC RESOURCES, LLC; and TEC PIPELINE, LLC, Debtors.	BAP No. NO-02-056
HOWARD C. WEBSTER and SHIRLEY WEBSTER, Plaintiffs – Appellants, v. TEC RESOURCES, LLC, a Delaware limited liability company; and TEC PIPELINE, LLC, a Delaware limited liability company, Defendants – Appellees.	Bankr. No. 00-03850-M Chapter 11 Bankr. No. 00-03851-M Chapter 11 Adv. No. 02-0058-M (Jointly Administered) ORDER AND JUDGMENT[*]

Appeal from the United States Bankruptcy Court
for the Northern District of Oklahoma

Before McFEELEY, Chief Judge, CLARK, and CORDOVA, Bankruptcy Judges.[1]

CLARK, Bankruptcy Judge.

[*] This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata,* and collateral estoppel. 10th Cir. BAP L.R. 8018-6(a).

[1] This appeal was submitted on its briefs to the panel, including the Honorable Donald E. Cordova, Chief Bankruptcy Judge of the United States Bankruptcy Court for the District of Colorado, for consideration in October 2002. Judge Cordova passed away on February 16, 2003. Prior to his death, however, he fully considered this matter and filed the attached Concurring Opinion.

The parties did not request oral argument, and after examining the briefs and appellate record, the panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. Fed. R. Bankr. P. 8012. The case is therefore ordered submitted without oral argument.

Howard C. and Shirley Webster (the "Websters") appeal (1) a Judgment of the United States Bankruptcy Court for the Northern District of Oklahoma denying the Websters' motion for summary judgment, granting a cross motion for summary judgment, and dismissing their Complaint against the reorganized debtors that sought the return of a lease interest that had been sold pursuant to 11 U.S.C. § 363(b),[2] and (2) the bankruptcy court's Order denying their motion for rehearing. For the reasons stated below, the bankruptcy court's Judgment and Order are AFFIRMED.

I. Background

The Websters leased certain oil and gas interests located in Oklahoma to Thermal Energy Corporation pursuant to a Lease Agreement. Thermal Energy Corporation later assigned its interest under the Lease Agreement to TEC Resources, LLC ("TEC"), and TEC assigned an undivided 75% of its interest under the Lease Agreement to STP, Inc., f/k/a Sooner Petroleum, Inc. After its assignment to STP, Inc., TEC retained a 25% working interest under the Lease Agreement, and certain oil and gas wells located on the real property described in the Lease Agreement.

TEC and TEC Pipeline LLC (collectively, the "Debtors") subsequently filed petitions seeking relief under Chapter 11 of the Bankruptcy Code. The Websters filed a proof of claim in the Debtors' jointly administered case, asserting that they were owed prepetition royalties under the Lease Agreement. The Debtors objected to the Websters' proof of claim, but they later withdrew their objection. The bankruptcy court then entered an Order allowing the Websters a general unsecured claim against the

[2] Unless otherwise noted, all future statutory references are to title 11 of the United States Code.

Debtors in the approximate amount of $5,800.

In the meantime, the Debtors sought authorization of the bankruptcy court to sell their interest under the Lease Agreement ("Sale Motion"). The Websters objected to the Sale Motion, claiming that the Lease Agreement was void under Oklahoma statutory law because they had not been paid royalties thereunder. The bankruptcy court subsequently entered a "Sale Order," granting the Sale Motion and authorizing the sale of all of TEC's right, title and interest in and to the Lease Agreement to Amvest Osage, Inc. Although not part of this Court's record, the Sale Order must have overruled the Websters' objection to the Sale Motion. The Sale Order is now final and non-appealable.

Shortly after the sale was approved, the bankruptcy court entered a Confirmation Order, confirming the Debtors' Joint Plan of Reorganization. The Confirmation Order is now final and non-appealable.

Several months after entry of the Sale Order and the Confirmation Order, the Websters filed a Complaint against the reorganized Debtors, seeking "return" of TEC's 25% interest under the Lease Agreement. The Websters alleged, as they did in opposition to Debtors' motion to sell TEC's Lease Agreement interest, that the sale to Amvest Osage, Inc. was invalid because TEC's interest in the Lease Agreement reverted to them when it failed to pay them royalties.

John Parker, the "Plan Agent" appointed under the confirmed Plan ("Parker"), answered the Websters' Complaint on behalf of the reorganized Debtors. He stated that neither he nor the reorganized Debtors could return TEC's 25% Lease Agreement interest to the Websters because that interest had been sold to Amvest Osage, Inc., and the sale had been consummated.

The Websters moved to strike Parker's Answer, claiming that his attorney, Neal Tomlins ("Tomlins"), had committed fraud on the court therein inasmuch as the sale was void due to TEC's inability to sell an interest under the Lease Agreement ("Motion to

Strike"). They also filed a Motion for Summary Judgment, which is virtually a copy of the their Complaint. The Summary Judgment Motion contains no specific statements of fact. Both of the Websters submitted Affidavits with the Summary Judgment Motion, summarily stating that they would suffer "irreparable financial harm" if their Summary Judgment Motion was not granted.

Parker jointly objected to the Websters' Motion to Strike and the Summary Judgment Motion, and moved for summary judgment against the Websters ("Cross Summary Judgment Motion").

In response to the Motion to Strike, Parker provided Tomlins's Affidavit, in which Tomlins denies the Websters' allegations of fraud on the court.

Parker's response to the Websters' Summary Judgment Motion and Cross Summary Judgment Motion is supported by several documents, all of which are introduced by the Affidavit of William Jackson, a former employee of TEC and a current consultant to Amvest Osage, Inc. (the "Jackson Affidavit"). Based on the Jackson Affidavit and the documents introduced thereby, Parker asserted that neither he nor the reorganized Debtors could return TEC's interest under the Lease Agreement to the Websters because it had been sold, and the sale had been consummated. Parker also noted that the Websters' allowed claim in the Debtors' Chapter 11 case covered their unpaid royalties.

The Websters filed a "Response to Neal Tomlins' Verbose Pleadings Including Motion for Declaratory Judgment." This Response contains no evidence much less specific allegations as to why the facts presented in Parker's pleadings are incorrect.

Based on the pleadings filed and the arguments made at a hearing, the bankruptcy court entered a Memorandum Opinion and a separate Judgment denying the Websters' Summary Judgment Motion, granting Parker's Cross Summary Judgment Motion, and dismissing the Websters' Complaint. In its Memorandum Opinion, the bankruptcy court stated that the Sale Order was final and non-appealable and, therefore, their Complaint,

which was essentially an untimely collateral attack of the Sale Order, should be dismissed.

The Websters filed a Motion for Rehearing from the Memorandum Opinion and Judgment, and Parker responded to their Motion. The bankruptcy court denied the Motion for Rehearing, stating that the Websters had asserted no grounds for a rehearing under Federal Rule of Civil Procedure 59, incorporated in bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 9023, but rather only disputed the result reached by the court ("Rehearing Order").

The Judgment and the Rehearing Order were timely appealed by the Websters. This Court has appellate jurisdiction over the appeal because both the Judgment and the Rehearing Order are final orders for purposes of appeal under 28 U.S.C. § 158(a)(1), and the parties have consented to this Court's jurisdiction under 28 U.S.C. § 158(c).

II. Discussion

The Judgment denied the Websters' Summary Judgment Motion, granted the Debtors' Cross Summary Judgment Motion, and dismissed the Websters' adversary proceeding. We review such judgments *de novo*, applying the same standard used by the bankruptcy court under Federal Rule of Civil Procedure 56, made applicable in adversary proceedings under Federal Rule of Bankruptcy Procedure 7056.[3] In so doing, we give "no form of appellate deference" to the bankruptcy court's ruling.[4]

Rule 56 provides, in relevant part, that:

> (c) **Motion and Proceedings Thereon**. . . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

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[3] *See, e.g.*, United States v. Sackett, 114 F.3d 1050, 1051 (10th Cir. 1997) (per curiam); Harris v. Beneficial Okla., Inc. (In re Harris), 209 B.R. 990, 993 (10th Cir. BAP 1997) (citing cases).

[4] Salve Regina College v. Russell, 499 U.S. 225, 238 (1991).

. . . .

> (e) **Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.[5]

The party seeking summary judgment has the initial burden to show that it is entitled to relief under Rule 56.[6]

The Websters' adversary proceeding against the reorganized Debtors asserts that TEC's interest under the Lease Agreement should be returned to them because the Sale Order is void. According to the Websters, TEC could not sell its interest under the Lease Agreement inasmuch as it had no interest to sell, arguing that TEC's interest was invalidated under Oklahoma law when it failed to pay the Websters royalties. They also allege fraud in connection with the Sale Order.

While the Websters have not articulated the legal grounds on which they are seeking relief, given their *pro se* status and the fact that we have no jurisdiction to review the final non-appealable Sale Order,[7] we construe their argument to be that they

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[5] Fed. R. Civ. P. 56(c) & (e); Fed. R. Bankr. P. 7056.

[6] *See, e.g.*, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); Whitesel v. Sengenberger, 222 F.3d 861, 867 (10th Cir. 2000).

[7] This Court's appellate jurisdiction is contingent, in part, on the timely filing of a notice of appeal. *See, e.g.*, Lopez v. Long (In re Long), 255 B.R. 241 (10th Cir. BAP 2000). Under Fed. R. Bankr. P. 8002(a), a notice of appeal must be filed within ten days of the entry of the order or judgment of which review is being sought. The Notice of Appeal in this case was filed more than ten days after the entry of the final Sale

(continued...)

should be afforded relief from the final Sale Order under Federal Rule of Civil Procedure 60(b), made applicable in bankruptcy proceedings under Federal Rule of Bankruptcy Procedure 9024.[8]

> Rule 60(b) provides, in relevant part, that:
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> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (3) fraud . . ., misrepresentation, or other misconduct of an adverse party; [or] (4) the judgment is void . . . . The motion shall be made within a reasonable time, and for reasons . . . (3) not more than one year after the judgment, order, or proceeding was entered or taken.[9]

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional

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[7] (...continued)
Order and, therefore, we do not have jurisdiction to review that Order. *See* 28 U.S.C. § 158(a)(1) (granting appellate jurisdiction over "final" orders); Plotner v. AT&T Corp., 224 F.3d 1161, 1169 n.3 (10th Cir. 2000) (order authorizing sale is final under § 158(a)(1)). Any attempt to circumvent the ten-day rule by the filing of a Complaint collaterally attacking the Sale Order after it became final and non-appealable was, as held by the bankruptcy court, improper. *See, e.g.*, Plotner, 224 F.3d at 1166; Andersen v. UNIPAC-NEBHELP (In re Andersen), 179 F.3d 1253, 1258-59 (10th Cir. 1999). We assume, therefore, that the legal basis for the Websters' Complaint, while not well-stated, is a direct attack of the final Sale Order under Fed. R. Bankr. P. 60(b). Plotner, 224 F.3d at 1174 (Rule 60(b) allows for direct attack of a final judgment).

[8] Although, as noted in the concurrence, the Websters did not file a motion under Rule 60(b) or raise Rule 60(b) as a cause of action in their Complaint, their allegations related to jurisdiction and fraud sound like Rule 60(b) allegations. These allegations were raised in the bankruptcy court, but were only construed as an improper collateral attack of the Sale Order. We acknowledge that denial of a collateral attack of the Sale Order was appropriate, and affirm the bankruptcy court on this point. *See* discussion in n.7 *supra*. To give the Websters every benefit of the doubt, however, recognizing, as does the concurrence that *pro se* litigants' pleadings should be liberally construed, we have considered the possibility that the Websters are "directly attacking" the Sale Order as they are permitted to do under Rule 60(b). Analysis under Rule 60(b), however, is wholly separate from improper "collateral attacks" barred under principles of issue and claim preclusion referenced in the concurrence. Thus, we do not dispute that if a collateral attack were the only type of attack that could made on the Sale Order that, as stated in the concurrence, "[t]here is nothing about this case that would 'demand departure from rigid adherence to the doctrine of *res judicata*.'" But, we insist on applying a separate analysis under Rule 60(b) to reject *all* attacks of the Sale Order permitted under law–both collateral attacks barred under *res judicata*, and direct attacks under Rule 60(b).

[9] Fed. R. Civ. P. 60(b).

circumstances."[10] Review of a final judgment or order under Rule 60(b) typically does not involve a review of the merits of the judgment or order itself, but rather requires consideration of whether the movant has shown any of the grounds for relief set forth in Rule 60(b).[11]

The Websters allege in their Complaint and Summary Judgment Motion that fraud is in question in this case and, therefore, it appears that they are seeking relief from the Sale Order pursuant to Rule 60(b)(3). They also maintain that the Sale Order is void, thus implicating Rule 60(b)(4). These construed causes of action are discussed below.[12]

A. The Websters do not have a cause of action under Rule 60(b)(3) and, therefore, the bankruptcy court did not err in dismissing their Complaint.

We have construed the Websters' Motion to Strike and Summary Judgment Motion as a request for relief from the Sale Order pursuant to Rule 60(b)(3). Under this Rule, the Websters had the burden to show that the Sale Order was entered as a result of fraud on the court by clear and convincing evidence.[13] Yet, the Websters produced no arguments, much less any evidence, detailing the fraud on the court that they allege. Their unsupported allegations of fraud are not sufficient as a matter of law to prove that the Sale Order should be set aside under Rule 60(b)(3) and, therefore, the bankruptcy court did not err in denying their Summary Judgment Motion to the extent

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[10] Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), *quoted in* Dimeff v. Good (In re Good), 281 B.R. 689, 699 (10th Cir. BAP 2002); *accord* Bud Brooks Trucking, Inc. v. Bill Hodges Trucking Co., 909 F.2d 1437, 1440 (10th Cir. 1990) (citing cases).

[11] Bud Brooks, 909 F.2d at 1440 (citing cases).

[12] We decline to treat the Websters' Complaint as a motion under the "catch-all" provision of Fed. R. Civ. P. 60(b)(6) (allowing relief or "any other reason . . . ."). The arguments made in the Websters' Complaint and Summary Judgment Motion can be read to request relief under Rule 60(b)(3) and (4) and, therefore, Rule 60(b)(6) is not applicable. Plotner, 224 F.3d at 1174 (Rule 60(b)(6) "may only be invoked as for causes *not* covered by another cause specifically enumerated in Rule 60(b) (1-5)") (emphasis in original); *accord* State Bank of Southern Utah v. Gledhill (In re Gledhill), 76 F.3d 1070, 1080 (10th Cir. 1996).

[13] Anderson v. Dept. of Health & Human Servs., 907 F.2d 936, 952 (10th Cir. 1990).

that it was based on this Rule.

On the other hand, Parker met his initial burden under Rule 56 of showing that there was an absence of evidence as to the issue of fraud and that there is no genuine issue as to any material fact related to this allegation. Tomlins denied any fraud on the court in relation to the Sale Order in his Affidavit, and the Websters did not come forward with any evidence contesting this sworn statement to establish a genuine issue of fact for trial.[14] As such, the bankruptcy court did not err in granting Parker's Cross Summary Judgment Motion on this issue, and dismissing the Websters' Complaint to the extent that it is based on a Rule 60(b)(3) cause of action.

B. The Websters do not have a cause of action under Rule 60(b)(4) and, therefore, the bankruptcy court did not err in dismissing their Complaint.

We have construed the Websters' Complaint and Summary Judgment Motion as a direct attack of the Sale Order under Rule 60(b)(4). In United States v. Buck,[15] the Tenth Circuit said the following about Rule 60(b)(4):

> A judgment is void [and thus may be set aside under Rule 60(b)(4)] "only if the court which rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process of law." In re Four Seasons Sec. Laws Litig., 502 F.2d 834, 842 (10th Cir.1974). Despite the language of Rule 60(b) that all motions for relief must be "made within a reasonable time," a motion under Rule 60(b)(4) may be made at any time. *See* Orner v. Shalala, 30 F.3d 1307, 1310 (10th Cir.1994); 12 Moore's § 60.44[5][c]; 11 Wright & Miller § 2862, at 324. We review *de novo* the [trial] court's ruling on a Rule 60(b)(4) motion. *See* Gschwind v. Cessna Aircraft Co., 232 F.3d 1342, 1345 (10th Cir.2000).

The Websters presented little argument and no evidence as to why the Sale Order should be set aside as void pursuant to Rule 60(b)(4). The record shows, however, this case is not one in which the Websters are claiming that the bankruptcy court lacked

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[14] In re Grandote Country Club Co., 252 F.3d 1146, 1149-50 (10th Cir. 2001) ("[U]nsupported conclusionary allegations . . . do not create a genuine issue of fact. To withstand summary judgment, the nonmoving party must come forward with specific facts showing that there is a genuine issue for trial.") (citations and internal quotes omitted).

[15] 281 F.3d 1336, 1344 (10th Cir. 2002).

personal jurisdiction over them or acted in a manner inconsistent with due process.[16] Rather, they seem to contend that the Sale Order is void because the bankruptcy court lacked subject matter jurisdiction over the sale of TEC's Lease Agreement interest inasmuch as TEC had no interest to sell under Oklahoma law. The record before us does not contain sufficient information to allow us to evaluate TEC's interest in the Lease Agreement under Oklahoma law at the time of the sale. But, the bankruptcy court had subject matter jurisdiction to rule on the Debtors' Sale Motion. That Motion, brought by the Chapter 11 Debtors pursuant to 11 U.S.C. § 363(b) and Federal Rule of Bankruptcy Procedure 6004, was a core proceeding[17] that arose under title 11 or arose in their Chapter 11 case.[18] While the Sale Order granting the Sale Motion is not part of the appellate record, the uncontested existence of the Sale Order means that the bankruptcy court must have overruled the Websters' objection to the Sale Motion. The bankruptcy court could only have overruled the Websters' objection to the Sale Motion in one of two ways: (1) it must have expressly held that TEC's Lease Agreement interest was property of the estate eligible for sale under § 363(b); or (2) it must have held that the Debtors were authorized to sell whatever interest they had in the Lease Agreement, and made no finding at all on the property of the estate issue. Under either scenario (1) or (2), the bankruptcy court was acting fully within the scope of its subject matter jurisdiction under §§ 363(b) and 541(a) and 28 U.S.C. §§ 157(b)(2)(A), (M), (N) and (O) and 1334(b).[19] Accordingly, the Sale Order is not void for lack of subject

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[16] The Websters must have had notice of the Debtors' Sale Motion prior to entry of the Sale Order because they objected to the Sale Motion. They did not argue that notice required under 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 2002 & 6004(a) was insufficient.

[17] 28 U.S.C. § 157(b)(2)(A), (M), (N) & (O).

[18] Id. at §§ 157(b)(1) & 1334(b).

[19] While a determination of a debtor's interest in property is determined by state law, § 541 governs what is property of a Chapter 11 estate. *See, e.g.*, Bailey v. Big

(continued...)

matter jurisdiction, and may not be set aside under Rule 60(b)(4).

Furthermore, we note that if, as in scenario (1), the bankruptcy court expressly ruled that TEC's Lease Agreement interest was property of the estate, the Websters have no Rule 60(b)(4) cause of action, even if that ruling was incorrect. Faced with an express ruling on the property of the estate issue, the Websters' proper recourse would have been to appeal the final Sale Order within the time prescribed under Federal Rule of Bankruptcy Procedure 8002. They failed to do so.[20] Rule 60(b)(4) may not be used by them now as a substitute for appeal.[21] This is especially true in the context of a § 363(b) sale, where it is well-established that policies of finality are paramount.[22]

We also point out that if scenario (2) applies, the Websters are not without a remedy. A Sale Order that does not rule on the ownership issue would not bind the Websters on that issue. Obviously, the Debtors could not sell more than they owned.[23] Thus, if TEC had no interest in the Lease Agreement to sell as a matter of law, Amvest Osage, Inc. got nothing from its purchase. Any dispute as to what Amwest Osage, Inc. holds, however, is not within the bankruptcy court's jurisdiction.[24] Thus, the bankruptcy court did not err in concluding that the Websters' adversary proceeding should be

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[19] (...continued)
Sky Motors, Ltd. (In re Ogden), 314 F.3d 1190, 1197 (10th Cir. 2002) (citing cases).

[20] *See supra* n.7.

[21] *See, e.g.*, Carpenter v. Williams, 86 F.3d 1015, 1016 (10th Cir. 1996); Bud Brooks, 909 F.2d at 1440 (Rule 60(b) may not be used as a substitute for a timely-filed appeal).

[22] *See, e.g.*, Balaber-Strauss v. Markowitz (In re Frankel), 191 B.R. 564, 571-72 (Bankr. S.D.N.Y. 1995) (discussing need for finality of § 363(b) sales, and limiting remedy of vacating sale orders based thereon) (citing numerous cases); In re Silver Bros., Co., 179 B.R. 986, 1007-1008 (Bankr. D. N.H. 1995) (same).

[23] *Cf.* Commerce Bank, N.A. v. Chrysler Realty Corp., 244 F.3d 777, 780 (10th Cir. 2001) (applying "principle of *nemo datqui non habet*–no one may transfer more than he owns.").

[24] *See* 28 U.S.C. § 1334(b).

dismissed as a matter of law.

C. The bankruptcy court did not err in entering the Rehearing Order.

The bankruptcy court did not abuse its discretion in refusing to grant the Websters' Motion for Rehearing under Federal Rule of Civil Procedure 59(e), as made applicable in bankruptcy under Federal Rule of Bankruptcy Procedure 9023.[25] Its reasoning for entering the Rehearing Order is adequately addressed therein and need not be restated here.

III. Conclusion

For the reasons stated above, the bankruptcy court's Judgment and Rehearing Order are AFFIRMED.

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[25] *See, e.g.*, Plotner, 224 F.3d at 1174, *cited in* Long, 255 B.R. at 245 (applying abuse of discretion standard to motion for rehearing).

CORDOVA, Bankruptcy Judge, Concurring.

I concur in the majority's affirmance of the bankruptcy court's decision denying the Websters' motion for summary judgment, granting summary judgment in favor of the reorganized debtor, dismissing the Websters' Complaint, and denying their motion for reconsideration under Rule 59(e). I hesitate to write because the opinion has not been designated for publication, but I am troubled by the majority's insistence in treating what is a straightforward appeal into either a motion or an independent action under Rule 60(b) merely because the Websters are not represented by an attorney. *Cf. McBride v. Deer*, 240 F.3d 1287, 1289 (10th Cir. 2001) (*pro se* prisoner pleadings to be liberally construed).

The Websters did not file a motion under Rule 60(b) contesting the sale order in the underlying bankruptcy case. They could have, and should have, raised fraud and issues concerning the validity of the bankruptcy court's judgment. Instead, they filed a Complaint against the reorganized debtor raising some oblique allegations of fraud and claiming the debtor in possession could not have sold its interest in the lease because the lease had been terminated when the debtor defaulted in making royalty payments. These are the same arguments that the Websters raised when they objected to the sale. The bankruptcy court allowed the sale over the Websters' objections, and the Websters did not appeal from that order. Thus, the sale order is a final, non-appealable order to which the doctrine of res judicata applies. *Brown v. Felsen*, 442 U.S. 127, 131 (1979). There is nothing about this case that would "demand departure from rigid adherence to the doctrine of res judicata," which should be the focus of the majority's opinion if it is construing the Websters' Complaint as an independent action under Rule 60(b). *United States v. Beggerly*, 524 U.S. 38, 45-46 (1998); *Crosby v. Mills*, 413 F.2d 1273, 1276 (10th Cir. 1969).